

HOUSE BILL No. 1570

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-27.

Synopsis: Technology commercialization credit. Establishes a 15% technology commercialization tax credit against state tax liability for expenses incurred to commercialize technology developed in Indiana.

Effective: July 1, 2003.

Murphy, Klinker, Heim

January 16, 2003, read first time and referred to Committee on Technology, Research and Development.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1570

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-27 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]:

4 **Chapter 27. Technology Commercialization Tax Credit**

5 **Sec. 1. The general assembly makes the following findings:**

6 (1) **Indiana is making investments in college and university**
7 **research but has an insufficient strategy for commercializing**
8 **the resulting technologies.**

9 (2) **College and university professors often take their research**
10 **and leave Indiana to create new companies and new jobs**
11 **elsewhere, depriving the college or university of a creative**
12 **and valued faculty member and Indiana of the ability to**
13 **benefit from homegrown economic development potential.**

14 **Sec. 2. This chapter is intended to achieve the following**
15 **purposes:**

16 (1) **To induce companies purchasing the rights to**
17 **commercialize technology produced at an Indiana college or**



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1 university to locate and grow their businesses in Indiana.

2 (2) To expand the economy of Indiana by enlarging its base of
3 technology and research based businesses.

4 (3) To increase the number of quality jobs available to an
5 educated workforce to retain the presence of young people
6 educated in Indiana colleges and universities.

7 (4) To attract to Indiana colleges and universities and retain
8 the finest research faculty.

9 Sec. 3 As used in this chapter, "commercialization costs" means:

10 (1) investment in machinery and equipment; and

11 (2) all expenditures associated with obtaining the rights to use
12 or the use of technology, including fees related to patents,
13 copyrights, and licenses.

14 Sec. 4. As used in this chapter, "machinery and equipment"
15 means machinery or equipment that is:

16 (1) a capital asset used in a trade or business;

17 (2) subject to depreciation under the Internal Revenue Code;
18 and

19 (3) placed in service and used in Indiana.

20 Sec. 5. As used in this chapter, "pass through entity" means:

21 (1) a corporation that is exempt from the adjusted gross
22 income tax under IC 6-3-2-2.8(2); or

23 (2) a:

24 (A) partnership;

25 (B) trust;

26 (C) limited liability company; or

27 (D) limited liability partnership;

28 that is not taxed as a corporation under IC 6-3.

29 Sec. 6. As used in this chapter, "taxpayer" means a person,
30 corporation, or pass through entity that seeks to or has become
31 qualified to claim a tax credit under this chapter.

32 Sec. 7. As used in this chapter, "taxpayer applicant" means a
33 taxpayer that qualifies for, applies for, and is awarded technology
34 commercialization tax credits based on an investment in
35 commercialization costs, as required by this chapter.

36 Sec. 8. As used in this chapter, "taxpayer claimant" means the
37 taxpayer that claims the technology commercialization tax credit
38 in conformity with this chapter against tax liability.

39 Sec. 9. As used in this chapter, "technology" means:

40 (1) the product or intellectual property owned or research
41 sponsored by a regionally accredited college, technical school,
42 or university located in Indiana; or

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(2) any product or intellectual property to which significant development or enhancement occurred at a regionally accredited college, technical school, or university located in Indiana.

Sec. 10. As used in this chapter, "state tax liability" means tax liability for any of the following:

- (1) Adjusted gross income tax (IC 6-3).
- (2) Financial institutions tax (IC 6-5.5).
- (3) Premiums tax (IC 27-1-18-2).

Sec. 11. Qualifying persons, corporations, and pass through entities that invest in the commercialization of Indiana technology in Indiana may earn, apply for, and be granted a tax credit against state tax liability in conformity with this chapter.

Sec. 12. The administration of applications for these credits and the provision of these credits shall be called the technology commercialization tax credit program.

Sec. 13. The technology commercialization tax credit program shall be implemented and administered by the department of commerce. Under IC 4-22-2 and this chapter, the department of commerce shall adopt rules necessary for the efficient and effective administration of this program in keeping with the purposes for which it is enacted.

Sec. 14. In providing for the implementation and administration of the program, the department of commerce shall work closely with the department of state revenue.

Sec. 15. The rules must include provisions for the following:

- (1) Provisions for the department of commerce to certify:
 - (A) the eligibility of a taxpayer applicant for receipt of the technology commercialization tax credit provided by this chapter; and
 - (B) the qualification of a taxpayer claimant to claim the credit against state tax liability.
- (2) Provisions for the presentation of a taxpayer's eligibility certification and any other documentation required to apply for and earn a tax credit.
- (3) Provisions governing the sale of certified technology commercialization tax credits to other taxpayers.

Sec. 16. To qualify for a technology commercialization tax credit for commercialization costs incurred by the taxpayer in the four (4) taxable years beginning with the first taxable year in which machinery and equipment are placed in service in Indiana, an applicant must meet all the following qualifications:



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(1) The applicant must incur commercialization costs for a trade or business conducted by the taxpayer.

(2) The applicant's commercialization costs must include an investment by purchase or lease of machinery and equipment that:

(A) is placed in and maintained in service in Indiana; and

(B) is used:

(i) in a manner that is directly related to the production of technology; or

(ii) to produce resources essential to the production of technology.

(3) The applicant's commercialization costs must be at least two hundred fifty thousand dollars (\$250,000) in the first taxable year that machinery and equipment are placed in service in Indiana.

(4) The applicant's commercialization costs must be at least two million dollars (\$2,000,000) before the end of the fourth taxable year in which the taxpayer is eligible for the technology commercialization tax credit.

Sec. 17. To qualify for a technology commercialization tax credit for four (4) additional taxable years immediately succeeding the first four (4) taxable years provided under section 16 of this chapter, the applicant must invest at least two hundred fifty thousand dollars (\$250,000) in each succeeding taxable year in commercialization costs for the production of:

(1) technology; or

(2) resources essential to the production of technology.

Sec. 18. A taxpayer is ineligible for a technology commercialization tax credit for more than eight (8) consecutive taxable years with regard to the same business location.

Sec. 19. A technology commercialization tax credit is not available in a taxable year in which machinery and equipment in which an investment is made is not in regular service in Indiana. The interruption of service, as determined under the rules of the department of commerce, does not terminate the eligibility for any further credit under this chapter in any subsequent tax year.

Sec. 20. A technology commercialization tax credit is not available in a taxable year for an investment for which any other tax credit based on research and development, as determined under the rules adopted by the department of commerce, is applied to state tax liability.

Sec. 21. (a) A taxpayer applicant that:



1 (1) earns, applies for, and is granted a credit under section 16
 2 of this chapter; and
 3 (2) fails to make at least two million dollars (\$2,000,000) in
 4 investment in commercialization costs, including machinery
 5 and equipment by the end of the third taxable year after the
 6 first taxable year in which the machinery and equipment are
 7 placed in service;
 8 is subject to subsection (b).

9 (b) The taxpayer applicant:

10 (1) must repay to the department of state revenue the amount
 11 of all technology commercialization tax credits claimed and
 12 credited against state tax liability;
 13 (2) forfeits any carry forward of other technology
 14 commercialization tax credits earned and retained for future
 15 use; and
 16 (3) is liable to the state for the price obtained for any
 17 technology commercialization tax credits sold.
 18 (c) The amount due under this section shall be treated as a
 19 liability for a listed tax that is due for the third taxable year after
 20 the machinery and equipment are placed in service.

21 Sec. 22. (a) A taxpayer applicant that:

22 (1) earns, applies for, and is granted a credit under section 15
 23 of this chapter; and
 24 (2) fails to make at least two hundred fifty thousand dollars
 25 (\$250,000) of investment by the end of each taxable year in
 26 which a tax credit is granted;
 27 is subject to subsection (b).

28 (b) The taxpayer applicant:

29 (1) is not eligible for any technology commercialization tax
 30 credit in that taxable year;
 31 (2) must repay any amounts allowed as a technology
 32 commercialization tax credit for that taxable year; and
 33 (3) ceases to qualify for any further technology
 34 commercialization tax credits for investment in that location.
 35 (c) The amount due under this section shall be treated as a
 36 liability for a listed tax due for the taxable year in which the
 37 taxpayer fails to make the required investment.

38 Sec. 23. Except as provided in section 24 of this chapter, a
 39 taxpayer applicant that the department of commerce certifies is
 40 eligible for a technology commercialization tax credit is entitled to
 41 a technology commercialization tax credit against state tax
 42 liability. The amount of the credit in any taxable year is equal to



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1 fifteen percent (15%) of the amount of money invested by the
 2 taxpayer applicant in commercialization costs for one (1) business
 3 location.

4 **Sec. 24.** Whenever a tax credit is claimed against state tax
 5 liability, whether by the taxpayer applicant or by a subsequent
 6 taxpayer claimant, the total of all credits applied in any taxable
 7 year may not exceed fifty percent (50%) of the total of all state tax
 8 liability due by the taxpayer in that taxable year after reduction of
 9 the amount by the sum of all other credits allowed against the tax,
 10 except any tax payments made by or on behalf of the taxpayer.

11 **Sec. 25.** If the amount of the technology commercialization tax
 12 credit, after applying any part of the credit that is carried forward
 13 from a prior taxable year, is greater than the taxpayer's state tax
 14 liability for the taxable year, the taxpayer claimant may carry
 15 forward the unused part of the credit to not more than twenty-one
 16 (21) subsequent taxable years. The amount of the tax credit that is
 17 applied to the taxpayer claimant's state tax liability reduces the
 18 amount of the credit that may be carried forward to a subsequent
 19 taxable year. A taxpayer claimant is not eligible to carry back or
 20 obtain a refund of any unused credit.

21 **Sec. 26. (a)** If a pass through entity does not have state tax
 22 liability against which the technology commercialization tax credit
 23 may be applied, a shareholder, partner, or member of the pass
 24 through entity is entitled to a technology commercialization tax
 25 credit equal to:

- 26 (1) the credit determined for the pass through entity for the
- 27 taxable year; multiplied by
- 28 (2) the percentage of the pass through entity's distributive
- 29 income to which the shareholder, partner, or member is
- 30 entitled.

31 (b) The credit provided under subsection (a) is in addition to a
 32 credit to which a shareholder, partner, or member of a pass
 33 through entity is otherwise entitled under this chapter. However,
 34 a pass through entity and a shareholder, partner, or member of the
 35 pass through entity may not claim a credit under this chapter for
 36 the same investment.

37 **Sec. 27.** Taxpayer applicants that meet all the following
 38 qualifications, as certified by the department of commerce, may
 39 sell all or any unused part of its technology commercialization tax
 40 credits to other taxpayers for use in the taxable year in which they
 41 are sold or for use in a future taxable year:

- 42 (1) The taxpayer applicant is identified as a business in one (1)

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of the following business activities:

(A) Advanced manufacturing, such as any of the following:

(i) Automotive and electronics.

(ii) Aerospace technology.

(iii) Robotics.

(iv) Engineering design technology.

(B) Life sciences, such as any of the following:

(i) Orthopedics or medical devices.

(ii) Biomedical research or development.

(iii) Pharmaceutical manufacturing.

(iv) Agribusiness.

(v) Nanotechnology or molecular manufacturing.

(C) Information technology, such as any of the following:

(i) Informatics.

(ii) Certified network administration.

(iii) Software development.

(iv) Fiber optics.

(D) Indiana twenty-first century logistics, such as any of the following:

(i) High-tech distribution.

(ii) Efficient and effective flow and storage of goods, services, or information.

(iii) Intermodal ports.

(2) The taxpayer applicant has not more than two hundred twenty-five (225) employees in the taxable years that the tax credits are earned and the taxable years that the tax credits are sold.

(3) At least seventy-five percent (75%) of all employees at the business location where the tax credits are earned are Indiana residents.

Sec. 28. In selling technology commercialization tax credits granted to them, the taxpayer applicants shall sell them for at least seventy-five percent (75%) of the value of the technology commercialization tax credits.

Sec. 29. The purchaser of unused credits shall apply the credits in the same manner and against the same taxes as the taxpayer applicant.

Sec. 30. To receive the credit provided by this chapter, a taxpayer claimant must claim the credit on the person's or corporation's annual state tax return or returns in the manner prescribed by the department of state revenue. The person or corporation shall submit to the department of state revenue all



1 information that the department of state revenue determines is
2 necessary for the calculation of the credit provided by this chapter
3 and for the determination of whether the person or corporation is
4 eligible for the credit. The department of state revenue may
5 require a pass through entity to provide all information necessary
6 to determine the amount of the credit to which a shareholder,
7 partner, or member is entitled.

8 SECTION 2. [EFFECTIVE JULY 1, 2003] IC 6-3.1-27, as added
9 by this act, applies only to taxable years beginning after December
10 31, 2003.

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